

# EXECUTIVE SUMMARY

## *Executive Council and Texas Boards of Physical Therapy and Occupational Therapy Examiners*

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The Executive Council of Physical Therapy and Occupational Therapy Examiners is an agency that seems to fly under the radar. This agency responsible for regulating physical and occupational therapy has not only escaped Sunset review for 23 years, but significantly, the regulations it oversees have escaped the fate of most other allied health professions in Texas. Physical and occupational therapy still merit state regulation, even if they do not present quite the same level of risk as the other health professions of medicine, dentistry, pharmacy, and nursing. The question is whether regulation justifies an independent agency structure. The regulation of many other allied health professions previously housed at the Department of State Health Services (DSHS) were moved to the Texas Department of Licensing and Regulation (TDLR) and the Texas Medical Board as part of last session's reconfiguration of the state's health and human services system. The regulation of physical and occupational therapy would appear to be a good candidate for such a move, too, to be administered with their therapy-related kin like speech-language pathology, athletic training, and massage therapy.

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However, one reason the executive council has flown under the radar is that it has been a stable, well-run agency, with an experienced, capable staff. The oversight structure, with separate boards for physical therapy and occupational therapy and an executive council made up of members of the two boards and chaired by a member of the public, may be a bit unwieldy, but provides a synergy that benefits the regulations. Ultimately, the cost of transferring these regulations to TDLR, largely to upgrade computer systems, and the ongoing effort by both TDLR and the medical board to assimilate 17 regulatory programs from DSHS, tipped the scales in favor of recommending continuing the agency with its current structure, and avoiding the upheaval inherent in such a transfer.

With the understanding of the lower risk associated with the practice of physical and occupational therapy, regulation needs to be tailored to reflect only what is needed to protect the public. To this end, Sunset staff found no need to continue the requirement to register physical and occupational therapy facilities that serves no public safety purpose. In addition, taking advantage of regulatory flexibility through an interstate licensing compact would help promote mobility of physical therapy professionals across state lines to improve client

access to care. Finally, updating agency statutes and practices to reflect current standards and circumstances would help focus the agency's regulatory effort.

The following material summarizes Sunset staff recommendations on the Texas Board of Occupational Therapy Examiners (OT board), Texas Board of Physical Therapy Examiners (PT board), and Executive Council of Physical Therapy and Occupational Therapy Examiners.

## Issues and Recommendations

### *Issue 1*

#### **The Requirement to Register Physical Therapy and Occupational Therapy Facilities Is Unnecessary.**

The Legislature added the requirement to register physical and occupational therapy facilities the last time the two regulatory boards went through Sunset reviews back in 1993. Physical and occupational therapy services in Texas can only be provided in a facility registered by the executive council, and the facility must have a therapist-in-charge responsible for compliance with registration requirements. Statute exempts healthcare and other facilities where physical and occupational therapy services are provided but fall under other regulatory jurisdictions.

The registration requirement serves no valid purpose. Due to the nature of physical therapy and occupational therapy, the facilities in which these disciplines are practiced do not present the type of risk seen in other facilities that typically justify registration. Likewise, nothing in the agency's complaint or enforcement data indicates public safety concerns related to these facilities. While the registration was designed to gain accountability over people and entities outside the agency's jurisdiction who might be providing services illegally, in practice, the sanctions have fallen exclusively on the physical and occupational therapy licensees that facilities employ, even though they have no responsibility for registration. The relatively severe penalties for practicing in an unregistered facility also exist despite no proof of harm for what amounts to a paperwork violation. While the registration fees create a windfall to the state, their one-size-fits-all approach is more of a financial hardship on small facility owners without the means of larger corporate-owned facilities. The facility registration does not require a lot of staff effort, but time spent should be on needed, useful activities.

#### **Key Recommendation**

- Discontinue the registration of physical and occupational therapy facilities and temporarily authorize the boards to expunge facility-related administrative violations from a licensee's record.

### *Issue 2*

#### **The Physical and Occupational Therapy Statutes Unnecessarily Impede Increasingly Mobile Workforces.**

Physical and occupational therapy practitioners are among the health professionals whose numbers are insufficient to meet present and future needs in Texas. While agencies generally do not overtly address shortages of practitioners, their policies and processes can have a significant impact on the ability of people to enter a profession. Licensing agencies must ensure that policies and processes for licensing

only relate to the ability to do the work safely and do not impose unnecessary barriers to entry. Standard national approaches for considering education, prior experience, and examination in licensing physical or occupational therapists mean that all practitioners effectively have the same basic qualifications wherever they practice. Common licensure requirements among the states provide the opportunity to consider interstate licensure compacts, such as one proposed for physical therapy to facilitate the movement of qualified licensees to and from Texas.

### **Key Recommendations**

- Adopt the Physical Therapy Licensure Compact.
- Provide clear statutory authority for licensure by endorsement.

## ***Issue 3***

### **Key Elements of the Boards' Statutes, Rules, and Policies Do Not Conform to Common Licensing Standards.**

In reviewing the regulatory functions of the executive council, PT board, and OT board, Sunset staff found that certain administrative, licensing, and enforcement processes in the executive council's and boards' statutes and operations do not match model standards developed over many years of Sunset reviews of regulatory agencies or common practices of comparable agencies. Specifically, the PT board's process for turning its continuing competence approval program over to the Texas Physical Therapy Association is an inappropriate delegation of its governmental duties.

### **Key Recommendations**

- Remove the boards' authority to delegate to other entities the responsibility of approving continuing education and continuing competence while clarifying their authority to preapprove course providers.
- Require the boards to conduct fingerprint-based criminal background checks of licensure applicants and licensees.

## ***Issue 4***

### **The State Has a Continuing Need to Regulate Physical Therapy and Occupational Therapy.**

In the broadest sense, physical and occupational therapy are healthcare professions providing rehabilitation and other services that deal with the proper functioning and movement of the body and the performance of the tasks and functions of everyday life. The current agency was established through Sunset legislation in 1993 merging the regulation of physical and occupational therapy and their separate boards under the oversight of the executive council.

Texas, like all other states, regulates physical and occupational therapy because of the potential for harm to patients. Physical and occupational therapy professionals have direct physical contact with patients, many of whom are from vulnerable populations, and these professionals do not work under the supervision of a physician or other healthcare practitioner. The demand for physical and occupational therapy services is likely to increase with the aging of the population and the greater need for rehabilitative and therapeutic services. While ample reason exists for regulating allied health professions like physical and occupational

therapy under an umbrella agency structure rather than as an independent agency, suitable options are not currently available to justify the added cost and disruption of such a transfer.

### Key Recommendation

- Continue the Texas Board of Physical Therapy Examiners and Texas Board of Occupational Therapy Examiners under the administration of the Executive Council of Physical and Occupational Therapy Examiners until 2029.

## Fiscal Implication Summary

Overall, recommendations in this report would result in a small negative fiscal impact to the state over the next five years from ending the registration requirement for physical and occupational therapy facilities.

*Issue 1* — Based on revenue generated from facility registration fees in fiscal year 2015, the recommendation to discontinue the registration of physical and occupational therapy facilities would result in the loss of approximately \$966,000 per year to the General Revenue Fund, beginning in fiscal year 2018.

### ***Executive Council of Physical Therapy and Occupational Therapy Examiners***

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2018	\$966,000
2019	\$966,000
2020	\$966,000
2021	\$966,000
2022	\$966,000